IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CIVIL APPLICATION NO.1177 OF 2005
IN
APPEAL FROM ORDER NO.637 OF 2005

Prasad S. Kusurkar & anr. ..Appellants.
Vs.
Arjun R. Solanki & anr. ..
Respondents.

...

Mrs. Deepa Juvekar for the Appellants.
Mr. Jaydeep Mitra with Mr. Nitin Mulye for Respondent Nos.1 and 2.

...

CORAM : DR.D.Y.CHANDRACHUD, J.

16th November, 2005.

P.C. :

Mentioned. Not on Board. By consent taken on Board.

The Applicants are co-owners of final Plot No.163 of T. P. S. IV (Mahim Division) situated at D. L. Vaidya Road, Mumbai 400 028. The Applicants have executed Memoranda of Understanding dated 23rd March, 1999 and 23rd April, 1999 in favour of the Respondents. A power of attorney was also executed in favour of the Respondents. The MOUs came to be terminated on 28th August, 2000. The Applicants instituted S.C. Suit No.1319 of 2002

before the City Civil Court. The Applicants have sought a declaration to the effect that on the termination of the MOUs the Respondents have no right whatsoever to act upon the MOUs and an injunction restraining the Respondents from acting on the basis thereof, getting plans sanctioned from the Municipal Corporation and from interfering with the possession of the Applicants. The Respondents instituted S.C. Suit 3984 of 2001 before the City Civil Court for injunction. The City Civil Court in the suit filed by the Respondents answered the preliminary issue by holding that it had no pecuniary jurisdiction to entertain the suit. The plaint in the suit filed by the Respondents was accordingly returned for presentation before the appropriate Court. The suit is lodged before this Court and has now been numbered as Suit 4008 of 2003. Ad interim relief has been refused in the Notice of Motion taken out by the Respondents in the Suit on the Original side. The plaint in the suit instituted by the Respondents has been amended so as to incorporate a prayer for specific performance.

Having regard to the nature of the controversy which is raised in the two suits respectively filed by the Applicants and by the Respondents, it is in the interests of justice that both the suits are

heard by one and the same Court. The suit instituted by the Respondents as noted earlier has already been lodged before this Court. In the circumstances, it would be appropriate and proper if the relief that is sought in this Civil Application is granted. The suit filed by the Applicants being S.C. Suit 1319 of 2002 is accordingly transferred to this Court and shall be heard together with Suit 4008 of 2003 instituted by the Respondents. Both the parties are agreeable to this course of action. The Civil Application is accordingly disposed of.